

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

NORMAN E. LACEY,

Plaintiff,

v.

CITY OF AUBURN,

Defendant.

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CASE NO: 3:06-CV-1145-MEF

DEFENDANT'S FIFTH MOTION IN LIMINE

COMES NOW Defendant, **City of Auburn**, in the above-styled cause and hereby moves the Court to prohibit the Plaintiff, his attorney, or any witnesses from introducing by way of testimony or documentary evidence, information regarding the following subject matter:

Any consideration of liquidated damages. The recovery scheme for an ADEA claim allows for the court to double the damages awarded by the jury (liquidated damages) if the jury finds that Defendant acted willfully in violation of the ADEA. However, this statutory scheme was intended by Congress to constitute *punitive damages* for punishment and in deterrence for violators. See Annotations and Comments to Eleventh Circuit Pattern Jury Instruction 1.4.1, citing *Lindsey v. Am. Cast Iron Pipe Company*, 810 F.2d 1094 (11th Cir. 1987) citing *Transworld Airlines, Inc. v. Thurston*, 469 U.S. 111, 105 S.Ct. 613, 83 L.Ed.2d 523 (1985).

As such, liquidated damages should not be allowed against Defendant as a local municipality because punitive damages are not recoverable against a municipality as a

matter of law.

Respectfully submitted this 9th day of April 2008.

City of Auburn, Defendant

By: /s/ Randall Morgan
Randall Morgan [MORG8350]
Elizabeth Brannen Carter [3272-C38E]
Attorney for Defendant City of Auburn

OF COUNSEL:
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Cole & Black, P.C.
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CERTIFICATE OF SERVICE

I hereby certify that on this the 9th day of April, 2008, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following via email:

Roderick E. Cooks, Esq.
Winston Cooks, LLC
The Penick Building
319 17th Street North
Birmingham, Alabama 35203

/s/ Randall Morgan
OF COUNSEL